

ARKANSAS SUPREME COURT

No. CR 07-488

LARRY RAIFSNIDER
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered June 14, 2007

PRO SE MOTION FOR APPOINTMENT
OF COUNSEL [CIRCUIT COURT OF
BENTON COUNTY, CR 2004-1324]

MOTION DENIED.

PER CURIAM

In 2006, judgment was entered reflecting that appellant Larry Raifsnider had entered a plea of guilty to terroristic threatening, residential burglary, theft of property, two counts of kidnapping and two counts of robbery. He was sentenced as a habitual offender to an aggregate term of 60 years' imprisonment.¹

Subsequently, appellant timely filed in the trial court a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1, seeking to have the judgment vacated. The petition was denied, and appellant, proceeding pro se, has lodged an appeal from the order in this court. He now asks that counsel be appointed to represent him on appeal.

A Rule 37.1 proceeding is a civil proceeding, separate and distinct from the underlying criminal conviction. *Arkansas Public Defender Commission v. Greene County Circuit Court*, 343 Ark. 49,

¹In addition to court costs and fees, appellant was ordered to pay \$90,000 to the victims in restitution.

32 S.W.3d 470 (2000); *Dyer v. State*, 258 Ark. 494, 527 S.W.2d 622 (1975). There is no right under our rules or any constitutional provision for appointment of counsel to represent an appellant in an appeal from the denial of relief under Rule 37.1. *See Maxie v. Gaines*, 317 Ark. 229, 876 S.W.2d 572 (1994) (per curiam). Nevertheless, in those cases where the indigent appellant makes a substantial showing in a motion that the appeal has merit and that he or she cannot proceed without counsel, we will appoint an attorney to represent the appellant. *See Howard v. Lockhart*, 300 Ark. 144, 777 S.W.2d 223 (1989) (per curiam). As appellant states only that he is indigent and contends in conclusory fashion that the proceeding is complicated, he has failed to offer any showing of substantial merit to the appeal. Accordingly, he has not met his burden of demonstrating that counsel should be appointed to represent him in this appeal.

Motion denied.